IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 9988 of 2007(L)

PETITIONER:

CANARA BANK, REP. BY ITS DEPUTY GENERAL MANAGER, CIRCLE OFFICE, TRIVANDRUM.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SMT.SANJANA R.NAIR

RESPONDENTS:

1. THE CENTRAL INFORMATION COMMISSION, BLOCK NO.IV, OLD JNU CAMPUS, NEW DELHI-110 067.

2. C.S.SHYAM, CHIRAMEL HOUSE, KOOTUNGAL LANE, KOCHUPALLY ROAD, THOPPUMPADY, KOCHI-682 005.

ADV. SRI.ELVIN PETER P.J. FOR R2.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON 11.7.2007 DELIVERED THE FOLLOWING:

W.P(C).No. 9988/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE PETITION DTD.1.8.2006 BEFORE R2.

P2. COPY OF THE REPLY TO R2 THROUGH ITS PUBLIC INFORMATION OFFICER DTD.29.8.06.

P3. COPY OF THE APPEAL PETITION BY R2 DTD.9.9.06.

P4. COPY OF THE REPLY GIVEN BY CHIEF PUBLIC INFORMATION OFFICER DTD.30.9.06.

P5. COPY OF THE APPEAL BY R2 DTD.25.10.2006.

P6. COPY OF THE NOTICE BY CENTRAL INFORMATION COMMISSION DTD.16.12.06.

P7. COPY OF THE OBJECTION BY THE PETITIONER DTD.2.1.2007.

P8. COPY OF THE ORDER ISSUED BY CENTRAL INFORMATION COMMISSION, DTD.26.2.07.

P9. COPY OF THE LETTER SENT BY R2 DTD.19.3.07 TO CENTRAL INFORMATION COMMISSION.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

==========

W.P.(C).No.9988 of 2007

==========

Dated this the 11th day of July,2007

J U D G M E N T

A nationalised bank, viz., Canara Bank, challenges the order of the Central Information Commission directing the bank to furnish the information requested for by the 2nd respondent employee of the bank. Ext.P8 is the said order.

2. The information requested for were the following:

> "(i) Posting/transfer of clerical staff of the Canara Bank to other branches for the period 1.1.2002 to 31.7.2006.
>
> (ii) Officials promoted and posted to other branches in Ernakulam district.
>
> (iii) Clerical staff transferred in Ernakulam district on temporary basis during the period 1.1.02 to 31.7.06.
>
> (iv) Details of appointment/promotion of clerical staff other than mentioned in (i) and (ii) above during 1.1.02 to 31.7.06 in district Ernakulam.
>
> (v) Furnish copies of transfer guidelines pertaining to clerical staff during 1.1.02 to 31.7.06. The applicant has sought the aforesaid information as per the proforma drawn by the [sic] him."

The bank seeks to deny furnishing of these

information to the 2nd respondent on the following grounds:-

(1) Under the Right to Information Act ("the Act" for short) only those information mentioned in Section 4 of the Act alone need be furnished,

(2) the information requested for by the 2nd respondent is exempted from disclosure by virtue of sub Sections (e) and (j) of Section 8 (1) of the Right to Information Act, and

(3) the information sought for by the 2nd respondent was so voluminous that it is physically impossible to furnish the same without employing considerable manpower and time.

3. The first contention of the petitioner is that Section 4 of the Act lays down the obligations of the public authorities. Under Section 4(b) every public authority has to publish the information enumerated therein. In respect of the employees of such public authority, only those information enumerated in Sub section (x) of Section 4(b) is required to be published and therefore, no other information is compulsorily

required to be furnished by any public authority in respect of the employees of that public authority.

4. In answer to the same, the counsel for the 2nd respondent would contend that this is a fallacious approach on the part of the petitioner. He would submit that under Section 3, citizens have the right to information subject to the provisions of the Act. The term, "information" is defined in section 2(f) and reading of these two sections together would make it abundantly clear that all information coming within the definition of the word, "information" as defined in the Act have to be supplied to a citizen at his request unless specifically exempted from disclosure under the other provisions of the Act. According to him, the information required to be supplied by a public authority to a citizen on request are not confined to the information mentioned in Section 4. That Section only casts certain obligations on public authorities for maintaining records and publishing the particulars mentioned therein. That does not amount to laying down that only those information

which the public authority are required to publish under Section 4(b) alone need be supplied to the citizens on request.

5. On a consideration of the rival arguments, I am of opinion that the stand of the petitioner is not supported by the provisions of Act. Section 3 of the Act reads thus:

> "**3. Right to information.** - Subject to the provisions of this Act, all citizens shall have the right to information."

The word, "information" is defined in Section 2(f), which reads thus:

> "**2. Definitions.** - In this Act, unless the context otherwise requires, -
>
> xxx xxx xxx xxx
>
> xxx xxx xxx xxx
>
> (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

Section 4 lays down thus:

> **4. Obligation of public authorities.**- (1) Every public authority shall -
>
> (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates

the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act,-

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control.

(vii) the particulars of any arrangement that exits for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each

of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed, and thereafter update these publications every year;

(c) public all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi judicial decisions to affected persons."

From a reading of those three sections together, I have no doubt in my mind that the information mentioned in Section 3 is not circumscribed by Section 4 at all. Section 4 only lays down certain

obligations the public authorities are required to perform in addition to the duty to furnish information to citizen when requested for. These obligations are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined under the Act subject of course to the exceptions laid down in the Act. The information detailed in Section 4 has to be compulsorily published by the public authority on its own without any request from anybody. Further, there is no indication anywhere in the Act to the effect that the 'information' as defined in Section 2(f) is confined to those mentioned in Section 4 of the Act. Therefore, I am unable to hold that only information mentioned in Section 4 need be supplied to citizens on request. Hence, I do not find any merit in the contentions of the petitioner in this regard.

6. The second contention is that the information requested for by the 2nd respondent is exempted from disclosure by virtue of Sections 8(1)

(e) and 8(1)(j). Sub Sections (e) and (j) of Section 8(1) read thus:

> "**8. Exemption from disclosure of information.**- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> xxx xxx xxx xxx xxx
>
> xxx xxx xxx xxx xxx
>
> (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
>
> xxx xxx xxx xxx xxx
>
> xxx xxx xxx xxx xxx
>
> (j) Information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;"
>
> Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
>
> xxx xxx xxx xxx xxx
>
> xxx xxx xxx xxx xxx"

7. I have already narrated the information requested for by the 2nd respondent in paragraph 2 of this judgment. Now the question is as to whether those information would come within the exemptions under these two sub sections. The

information requested for by the 2nd respondent relates to transfer and promotion of employees of the bank. I am not satisfied that such information pertains to any fiduciary relationship of the petitioner bank with anybody coming within the purview of Section 8(1)(e). The dictionary meanings of the word, "*fiduciary*" are as follows:-

1. of a trust, trustee, or trusteeship;
2. held or given in trust;
3. depending for its value on public confidence or securities.

Black's Law Dictionary (Seventh Edition) gives the meanings of '*fiduciary*' as,

1. One who owes to another duties of good faith trust, confidence and candor.
2. One who must exercise a high standard of care in managing another's money or property.

The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with the its employees within the above meanings. Those information involved herein cannot be said to be held in trust by the Bank on behalf of its

employees and therefore cannot be exempted under this sub section. In fact, without knowing this information, one employee cannot know his rights *vis-a-vis* other employees. In this connection, it has to be noted that one of the information requested for is transfer guidelines pertaining to clerical staff. Any member of the staff of the bank is, as of right, entitled to know what are those guidelines, even apart from the Right to Information Act. Therefore, the information requested for by the 2nd respondent enumerated above cannot be denied to the second respondent relying on section 8(1)(e). Further, these information have necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the Bank and to contain corruption so as to hold the Bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the Act, as proclaimed in the preamble to the Act.

8. The next exemption claimed by the

petitioner is on the ground that the information sought for by the second respondent relates to personal information pertaining to the employees of the Bank, disclosure of which has no relationship with any public activity or interest of the Bank or its employees and it would cause unwarranted invasion of the privacy of those employees, details of whose transfers are requested for by the 2nd respondent. I am of opinion that if this contention on the basis of section 8(1)(j) is upheld, it would in fact run counter to the very object of the Right to Information Act itself. In this connection, I may extract the preamble to the Right to Information Act.

> *"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.*
>
> *WHEREAS the Constitution of India has established democratic Republic;*
>
> *AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:"

(Emphasis supplied.)

In fact, if that contention is accepted then information relating to any person in respect of his illegal activities, especially corruption or misconduct could be withheld on the basis of the said section which is not what is contemplated under the Right to Information Act. I am of opinion that the information mentioned in Section 8(1)(j) is personal information which are so intimately private in nature that the disclosure of the same would not benefit any other person, but would result in the invasion of the privacy of that person. In the present case, without the information requested for the 2nd respondent would

not be in a position to effectively pursue his claim for transfer in preference to others. On the other hand, the disclosure of such information would not cause unwarranted invasion of privacy of the other employees in any manner in so far as that information is not one which those employees can keep to themselves. If the 2nd respondent is to contest that the transfers made are in violation of his rights for preferential transfer, he necessarily should have the information which cannot be withheld from him by resort to Section 8(1)(j). More importantly, the proviso to the section qualifies the section by stating that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. By no stretch of imagination can it be held that the information requested for by the 2nd respondent are information which can be denied to the Parliament and a State Legislature. In fact that proviso effectively nullifies the impact of the main provision to a great extent. Therefore, I do not find any merit in the

contention based on Section 8(1)(j) also.

9. The last contention is that the information requested for by the 2nd respondent relates to a period of five years and it would require tremendous manpower and time to gather the same. I do not find much merit in this contention also. It is not as if every day the bank transfers clerical staff. At the most transfers would be only once in a year. In Ext.P1, which is the request made by the 2nd respondent for information, he has specifically stated that the information which he requires is in respect of clerical staff transferred to Ernakulam District of the Canara Bank for the period from 2002 to 2006. Such information for a period of five years cannot be said to be that voluminous requiring tremendous manpower and time. In any event, when the Act does not exempt voluminous information from disclosure, the petitioner cannot deny such information on that ground. In the above circumstances, I do not find any merit in this contention also.

10. In this connection I must also note the

contention of the 2nd respondent that originally when the petitioner applied for the information by Ext.R2(a), the reply given by the petitioner bank, had nothing to do with any of the contentions which have been raised now. He refers to Ext.R2(b) letter by which the petitioner's request was originally turned down, which does not contain any such reasons as now raised. I note that the reason mentioned in Ext.R2(b) is thus:

> "We note that you have joined the present branch only on 15/10/2001. Request from many employees much senior to you for a transfer to your choice place is pending for consideration.
>
> Hence we regret our inability to consider your request at present. However we have noted your request for consideration at the appropriate time."

This was again repeated in Ext.R2(d), two years later, by an identical letter wherein also, none of the contentions now raised has been stated. That being so, I find merit in the contention of the 2nd respondent that the present contentions are only an after-thought to deny the petitioner the information which he is legitimately entitled to have.

In the above circumstances, I do not find any

merit in the contentions of the petitioner in this writ petition and accordingly the same is dismissed. However, I do not make any order as to costs.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.